



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Claims Against the Dealer Bond
of Conrath Auto Body and Sales

Case No.: TR-99-0041

FINAL DECISION

On October 26, 1999, James J. Leland, filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Conrath Auto Body and Sales (Dealer). The claim along with documents gathered by the Department in its investigation of the claim was referred to the Division of Hearings and Appeals.

By letter dated February 11, 2000, the Administrative Law Judge (ALJ) advised the parties that he would issue a preliminary determination in this matter without a hearing. The parties were given until February 21, 2000, to file any additional documents or information that they wished to have the ALJ consider in issuing the preliminary determination. The Dealer filed a letter objecting to the claim on February 18, 2000. A Preliminary Determination based on the documentation contained in the file and required by sec. Trans 140.26(4)(a), Wis. Adm. Code, was issued on April 13, 2000. On May 19, 2000, James Leland filed an objection to the Preliminary Determination pursuant to sec. Trans 140.26(5)(b), Wis. Adm. Code. Pursuant to due notice a hearing under sec. Trans 140.26(6), Wis. Adm. Code, was conducted in this matter on June 30, 2000, in Eau Claire, Wisconsin. Mark J. Kaiser, Administrative Law Judge, presiding.

In accordance with secs. 227.47 and 227.53(1)(c), Stats., the PARTIES to this proceeding are certified as follows:

Mr. James J. Leland
11745 County Hwy. S
Chippewa Falls, WI 54729

Conrath Auto Body & Sales
c/o Drew Westlund
C49 3rd Street
Conrath, WI 54731

Old Republic Surety
P. O. Box 941
Brookfield, WI 53008-0941

James Leland objected to Finding of Fact No. six of the Preliminary Determination. Finding of Fact No. six found that "the gross weight of this vehicle is apparently 16,000 pounds and is exempt from the disclosure requirements." In his letter objecting to the Preliminary Determination, Mr. Leland indicated that the actual weight of the vehicle is approximately 13,500 pounds. However, at the hearing he testified that he has never had the vehicle weighed and is unsure of the gross weight of the vehicle. Dean and Debbie Westlund, the owners of Conrath Auto Body and Sales, testified at the hearing that they did do a presale inspection of the vehicle; however, because they believed the vehicle's gross weight exceeds 16,000 pounds, the vehicle should be exempt from the disclosure requirements and no Wisconsin Buyers Guide was completed for the vehicle. There is no conclusive evidence of either the gross vehicle weight rating or the gross weight of the subject vehicle in the record. The Westlund's belief that the gross weight of the vehicle exceeds 16,000 pounds and is, therefore, exempt from the disclosure requirements of sec. 139.04(6), Wis. Adm. Code, is reasonable. Based upon the evidence presented at the hearing, no reason exists to modify Finding of Fact No. 6 of the Preliminary Determination.

Mr. Leland also objected to Findings of Fact No. nine of the Preliminary Determination. In his letter objecting to the Preliminary Determination, Mr. Leland alleged that he was shown a typewritten statement indicating that a new engine had been installed in the vehicle. Mr. Leland further alleged that he relied on this statement (admitted as Exhibit 9 at the hearing) in deciding to purchase the vehicle. The Westlunds presented credible testimony at the hearing that the statement was prepared by a previous dealer and that they did discuss the contents of the statement with Mr. Leland. They advised Mr. Leland that they had no records to support the statement that the vehicle had a new engine. Instead they provided him with the name of the previous owner of the vehicle and encouraged him to contact the previous owner to verify whether a new engine had been installed in the vehicle. Mr. Leland admitted that he did contact the previous owner and was told that a new engine had not been installed in the vehicle.

There is no evidence that the Dealer made any false, deceptive, or misleading representations about the vehicle to Mr. Leland. If Mr. Leland chose to rely on the typewritten statement found in the vehicle even after the previous owner of the vehicle told him that no new engine had been installed in the vehicle and the Westlunds told him they had no records to verify that the vehicle had a new engine, the Dealer should not be held responsible for such reliance. Furthermore, Mr. Leland actually testified at the hearing that he did not see Exhibit 9 until after he returned to the dealership and complained that he had to have the vehicle's engine rebuilt. Although this testimony contradicts other evidence in the record, if this testimony is true, it would have been impossible for Mr. Leland to have relied on the contents of the statement in deciding to purchase the subject vehicle. Based upon the evidence presented at the hearing, there is no reason to modify Finding of Fact No. nine of the Preliminary Determination. The Final Decision in this matter is essentially unchanged from the Preliminary Determination issued in this matter.

FINDINGS OF FACT

1. Drew Westlund, d/b/a Conrath Auto Body and Sales (Dealer) is a motor vehicle dealer licensed by the Wisconsin Department of Transportation pursuant to sec. 218.10, Stats. The Dealer's facilities are located at C49 3rd Street, Conrath, Wisconsin.

2. The Dealer has had a surety bond in force from January 1, 1997 to the present date. (Bond No. MSA 1153701 from Old Republic Surety Company.)

3. On May 20, 1999, James J. Leland purchased a 1982 Chevrolet P30 Step Van, vehicle identification number 1GCJP32W0C3327620, from the Dealer. Mr. Leland paid \$6,145.50 including tax and registration for the vehicle. The vehicle had approximately 199,000 miles on it at the time it was purchased by Mr. Leland. According to the purchase contract, the vehicle was sold "As Is—No Warranty."

4. Shortly after purchasing the vehicle, Mr. Leland had a mechanic check the engine of the vehicle. It was determined that the timing on the engine had been retarded. After the timing was properly set, the engine knocked. The mechanic then investigated the condition of the engine further and determined that the bearings were worn out. Mr. Leland complained to the Dealer about the condition of the engine. The Dealer refused to pay for repairs to the engine. Mr. Leland had the engine rebuilt at a cost of \$2,280.19.

5. On July 26, 1999, Mr. Leland filed a complaint against the Dealer with the Department of Transportation—Dealer Section (Dealer Section). In his complaint, Mr. Leland alleged that the Dealer had told him the engine of the vehicle had been rebuilt. Mr. Leland also submitted a copy of a typewritten statement he found in the vehicle stating the engine only had 500 miles on it.

6. The investigator for the Dealer Section investigated the complaint and concluded the Dealer failed to complete the purchase contract properly in violation of sec. Trans 139.05, Wis. Adm. Code. The investigator also initially concluded that the Dealer violated sec. Trans 139.04(6)(a), Wis. Adm. Code, by failing to complete a Wisconsin Buyers Guide for the vehicle. Section Trans 139.04(6)(c)4, Wis. Adm. Code, exempts from the disclosure requirements of sec. Trans 139.04(6)(a), Wis. Adm. Code, vehicles with either a gross vehicle weight rating (GVWR) in excess of 16,000 pounds or vehicles which are or have been registered at a gross weight exceeding 16,000 pounds. According to Division of Motor Vehicle Records, the GVWR for this vehicle is between 10,000 and 14,000 pounds. However, when Mr. Leland registered the vehicle he applied for 16,000 pound truck registration plates for the vehicle. Accordingly, the gross vehicle weight of the vehicle is apparently 16,000 pounds and is exempt from the disclosure requirements.

7. On October 25, 1999, Mr. Leland filed a claim against the surety bond of the Dealer. The amount of the claim is \$2,280.19, the amount spent to rebuild the engine of the vehicle.

8. Mr. Leland suffered a loss as a result of purchasing the vehicle in the amount of the cost of having the vehicle's engine rebuilt. However, the only apparent violation committed by the Dealer related to this transaction is the Dealer's failure to properly complete the purchase contract. Mr. Leland's loss was not the result of the improperly completed purchase contract.

9. Mr. Leland purchased a 17-year old truck with almost 200,000 miles on it. It is not surprising that a truck this old with this many miles would need to have the engine rebuilt. Mr. Leland is alleging that he was misled into believing that the engine had already been rebuilt by verbal statements made by the Dealer and a typewritten statement he found in the vehicle. The Dealer denies telling Mr. Leland that the engine was rebuilt and alleges that the typewritten statement was prepared by another dealer. Since the vehicle is apparently exempt from the written disclosure requirements of sec. Trans 139.04(6), Wis. Adm. Code, unless Mr. Leland can prove that the Dealer made false, deceptive, or misleading representations about the vehicle. There is no violation by the Dealer that resulted in Mr. Leland's loss and his claim is not allowable.

CONCLUSIONS OF LAW

1. James J. Leland's claim arose on May 20, 1999, the date he purchased the subject vehicle from Conrath Auto Body and Sales. The surety bond issued to Conrath Auto Body and Sales by Old Republic Surety Company covers a one year period commencing on January 1, 1999. The claim arose during the period covered by the surety bond.

2. Mr. Leland filed a claim against the motor vehicle bond of Conrath Auto Body and Sales on October 26, 1999. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to sec. Trans 140.21(1)(d), Wis. Adm. Code, the claim is timely.

3. Mr. Leland has not shown that the loss he suffered was the result of an act of Conrath Auto Body and Sales, which would be grounds for suspension or revocation of its motor vehicle dealer license. Accordingly, the claim is not allowable.

4. The Division of Hearings and Appeals has authority to issue the following order:

ORDER

The claim filed by James J. Leland against the motor vehicle dealer bond of Conrath Auto Body and Sales is DENIED.

Dated at Madison, Wisconsin on July 27, 2000.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: _____

MARK J. KAISER
ADMINISTRATIVE LAW JUDGE

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to insure compliance with sec. 227.48, Stats., and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to sec. 227.49, Stats. Rehearing may only be granted for those reasons set out in sec. 227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.
2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of secs. 227.52 and 227.53, Stats. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of secs. 227.52 and 227.53, Stats., to insure strict compliance with all its requirements.